

Water Pollution Control Advisory Council (WPCAC) Meeting
August 31, 2006 10:00 a.m. – 12:30 p.m.
Director's Conference Room 111 Metcalf Building

Call to Order

Chairman Terry McLaughlin called the Water Pollution Control Advisory Council meeting to order on August 31, 2006 at 10:00 a.m.

Roll Call

Terry McLaughlin reminded the Council that those who have selected or need to select an alternate, to please let Petrina Fisher or Bob Bukantis know of those selections.

Council Members Present: Terry McLaughlin (Chair), Scott Anderson (alternate), Matt Clifford, Josephine Lahti (alternate), Roger Muggli, John Peterson (alternate), Earl Salley, Dude Tyler, Kathleen Williams.

A quorum is present.

Department Personnel Present: Bob Bukantis (Council Secretary) Water Quality Planning Bureau (WQPB), Planning, Prevention and Assistance Division (PPAD); Bonnie Lovelace Water Protection Bureau (WPB) Permitting and Compliance Division (PCD); Eric Regensburger WPB, PCD; Tom Ellerhoff, Directors Office; Claudia Massman, Legal; Petrina Fisher (Administrative Support) WQPB, PPAD.

Approval of Agenda

Terry McLaughlin asked for additions or changes to the agenda.

A motion to approve the agenda was made and seconded. The motion carried and the agenda was approved as written.

Approval of Minutes for May 4, 2006 Council Meeting

Terry McLaughlin asked for any corrections or edits to the May 4th, 2006 meeting minutes.

A motion to approve the May 4, 2006 minutes was made and seconded. The motion carried and the May 4, 2006 minutes were approved as written.

Action Items

Selection of Vice Chair

Terry McLaughlin said it is important that there is at least one other person who can be charged with running the meeting in the event that the Chairman cannot be there.

A nomination for Dude Tyler for Vice Chair was made and seconded. The motion carried and Dude Tyler is the Vice Chair for the Council through the remainder of 2006.

Gallatin River Outstanding Resource Water Designation

Terry McLaughlin said the Council is being asked to comment and make recommendations on this proposed rulemaking that would designate a portion of the Gallatin River as an Outstanding Resource Water (ORW) to provide the highest level of nondegradation protection to that water.

Bob Bukantis gave an overview Power Point presentation on how the ORW designation fits in with water quality standards (see Power Point presentation). On September 15, the Board of Environmental Review (BER) is going to decide whether to initiate the rulemaking process to designate the specified portion of the Gallatin River as an ORW. The draft environmental impact statement (DEIS) review and the ORW designation rulemaking will run simultaneously. If BER does decide to designate the Gallatin as an ORW, there needs to be time to get legislation in place for consideration by the Legislature; otherwise, there would be two years to solicit legislative approval to complete the designation process.

Terry McLaughlin asked where is it said that the Legislature has ultimate approval, does that mean it doesn't have to be signed by the Governor as a final action?

Claudia Massman said this is just like any other bill that goes through the legislature process and does need approval by the Governor.

Earl Salley asked were there any restrictions on petitioning for an ORW if it had already been rejected once?

Bob Bukantis said there is no restriction on bringing forth an ORW petition if it had been rejected. The Gallatin ORW is grandfathered in under the 2001 law. The 2003 legislature modified the ORW process under the water quality act to make it more burdensome to bring a water body through the process.

Claudia Massman said when the statute was amended one of the main things changed was that the petitioner must pay for the EIS.

Eric Regensburger gave a detailed Power Point presentation on the summary of the Gallatin River ORW designation (see Power Point presentation).

Terry McLaughlin asked if there is any language regarding ORWs that address nonpoint source (NPS) activities from not being allowed to have a permanent measurable change in water quality?

Eric Regensburger said the law does not discuss NPS and only discusses point sources.

Terry McLaughlin asked if there were actual transit times established?

Eric Regensburger said the DEIS uses an approximately one-year transit time frame.

Terry McLaughlin asked where is the cumulative measurement applied in terms of a boundary condition? What are the total river miles for the ORW? Doing this on a cumulative

basis does not accurately reflect the impacts that may occur upstream but are a non-impact at the compliance point.

Eric Regensburger said that the DEIS adds up all the contributions in the ORW and determines the impacts at Spanish Creek. This designation is for about 50 river miles. The Department did look at dividing the Gallatin River into sections, but it became too complicated. The trigger level is based on a calculation and DEQ is not going out to do actual measurements, so the amount allowed in the river will not be dependent on samples taken at the compliance point. DEQ felt there needed to be a definable endpoint so everyone would know what the targets were and how they were going to be affected. Using the calculation eliminates some of the uncertainties for pollutants that may be diluted before they reach the end-point.

Kathleen Williams asked what kind of flow year was used?

Eric Regensburger said the DEIS used the mean flow in February, which is similar to the 7Q10.

Scott Anderson asked why DEQ is not currently using their authority to use the cumulative impacts alternative?

Eric Regensburger said the trigger values were developed as part of the nondegradation policy in the 1990s and were developed more for large industrial discharges. When this was developed, DEQ was not envisioning as much subdivision growth in the State.

Bonnie Lovelace said that the money has not been available to do this level of study in the past. This level of study is being done in this area because of the DEIS. The development in this area has been very great in the past decade and catching up with this level of development is not easy because of the need for dollars, staff time, and the availability of data to produce a study at this level.

Terry McLaughlin asked how a discharge could be non-significant if it does bump up some parameter to a threshold value?

Eric Regensburger said the nondegradation rules are a misnomer. They do allow some degradation from any one regulated source. DEQ uses calculations to determine if the degradation is significant or not significant. The level at which the change is significant or not significant is defined in the rule and is different for each parameter. If the change is less than the trigger level, it is degradation but is classified as nonsignificant degradation and is allowed. If the change is above the trigger level, it is also degradation but is classified as significant degradation and is not allowed. Every discharge has some level of degradation. Degradation in an ORW is allowed as long as it does not cause a measurable permanent change.

Terry McLaughlin asked if the new allowable 100 SFEs fall into the concept of first in time, first in right, as in water rights? If a problem develops down the road from a water quality standpoint, would it always be the last ones that would have to be dealt with?. If you go above

the cumulative impact threshold, where do you go looking to remedy the problem? Is it always the last entity that was put in place?

Eric Regensburger said that DEQ is not going to kick people out of their homes after the fact.

Tom Ellerhoff said there is a footprint and a level in which you can't go over. This does not mean that development stops. It means that for development to continue, people are going to have to put more money and more resources into either moving systems further away or to having more sophisticated systems put in place.

Eric Regensburger said that since a calculation is being used and not an actual measurement, once DEQ reaches that number, no more systems will be allowed in the area. DEQ is not going to go out and measure the water to see how close the actual water quality is to the trigger value. Even if it is measured, it is difficult to determine what the sources are. Some sources are not regulated by the ORW so there will be nutrients that will be going in to the rivers through other means.

Scott Anderson asked if the ORW regulatory changes compliment the TMDL process?

Bob Bukantis said that the TMDLs focus on getting waters down to the standards when they are exceeding those standards. The impaired reaches in this area are tributaries. Anything regarding nutrients will only help clean up the Gallatin. The nondegradation only applies to new and increased point sources. They two processes will compliment each other.

Kathleen Williams asked if the Gallatin County's new riparian setbacks was accounted for in the DEIS footprint?

Eric Regensburger said that it probably was not accounted for as the setback rule may not have been passed at the time the DEIS was done. The Gallatin DEIS has set a minimum setback of 300 feet so the Gallatin County's setback limits may not make much of a difference.

Roger Muggli said the ORW classification is heading in the right direction. It is good to do something to protect the high quality water.

Bob Bukantis said that the rule notice basically specifies which stretch of river would be designated as an ORW. There is language that gives the Department the authority to implement the ORW as Eric Regensburger explained.

Kathleen Williams asked if the Gallatin River meets one or more of the outstanding eligibility criteria? The proposed rules do indicate that it does meet some of those criteria, but none of the discussion was on whether or not it is outstanding. Has this already been decided or is this still a question?

Eric Regensburger said that the Board has already made that decision by going forward with the petition.

Bob Bukantis said the Board can still change their decision and decide not to designate the Gallatin River as an ORW. The Board has a two step process. The first step is the initial decision if there is enough information that they think it is worthy of consideration of an ORW. Once it is in the rulemaking process the proposed rule is subject to further scrutiny.

Terry McLaughlin said he does not think the Board has made a determination that it is an ORW. The Board made a decision to accept the petition to proceed with the process to designate is as an ORW.

Kathleen Williams asked if it was normal for DEQ to not identify a preferred option?

Tom Ellerhoff said this is the Board's DEIS. DEQ agreed to do the DEIS but the rulemaking is not from DEQ.

Kathleen Williams asked if the ORW management has been applied in Glacier National Park? It seems that DEQ is just now inventing the implementation process.

Claudia Massman said that the designation for national parks and wilderness areas waters as ORWs was put in place in 1994. In theory, there is not new development in the parks. Any current point sources would have to go through a review process to ensure that there would not be any change to the water quality if they wanted to make changes to their systems.

Kathleen Williams asked if DEQ has consulted with other States in developing this approach?

Eric Regensburger said that he did not know if the contractor consulted with other States. DEQ did some research and did not find many States with ORWs.

Kathleen Williams said that there are other States that do have ORWs in place and proposals in the works. A list of other state contacts can be forwarded to DEQ.

Bob Bukantis asked that the list of contacts be forwarded to him.

Matt Clifford said that if DEQ does do comparisons with other state ORWs, DEQ would also want to look closely at that state's nondegradation policy as well.

Scott Anderson asked in the event that the Gallatin is designated as an ORW, does DEQ see a significant increase in resource requirement for the Department to maintain or monitor that designation?

Eric Regensburger said that designating the Gallatin as an ORW is not going to increase the resource requirement because DEQ currently has to review all the sites under the nondegradation policy. It will be the nondegradation process with different criteria. The hardest part will be keeping track of what has gone in after the ORW designation occurs.

Josephine Lahti asked if the footprint area can be changed or is that area set?

Eric Regensburger said that the footprint area is in the DEIS which is up for comment. Anything in it can be commented on and changed.

Dude Tyler said that over the years the State has continued to be reasonable with new developments. Legislatively, Montana has moved away from keeping the waters completely pure and towards how can we do business. This is a practical way of looking at how Montana administers the water quality laws. It is worth looking at and trying this process.

Matt Clifford said that with as much money that has been spent for the DEIS, it should be recommended going through the process.

A motion was made and seconded that the Board go forward with the rulemaking to decide whether to designate the Gallatin as an ORW or not. All approved the motion. The motion carried as submitted.

Kathleen Williams asked if the Board has more than one meeting in the area affected by the rule?

Bob Bukantis said that on some contentious rulemakings, it is quite common for the Boards attorney and DEQ staff to hold hearings in several areas. The Board takes into consideration the resources they have to determine how much involvement they want to have on a rulemaking.

Kathleen Williams said that one concern is the proposed rule states that the Board will be meeting in Big Sky. This does not affect just Big Sky but the downstream section and the valley as well. It is recommended that for public comment, whether on the DEIS or for the Board's meetings, to have meetings in the valley or somewhere accessible to the downstream population. Greater Gallatin Watershed Council and Blue Water Task Force may be willing to help host a meeting.

Claudia Massman said that the Board usually discusses the hearing amongst themselves to determine where to have the hearing and if multiple hearing locations are needed. It usually is not included in the proposed rulemaking.

Kathleen Williams recommended striking out the reference to meeting location in the proposed rulemaking now if it is discussed regularly and to ensure that the downstream folks are represented in any public comment strategy.

A motion was made and seconded that the Department and/or the Board ensure they incorporate public involvement aspects that facilitate the involvement in this process of not only Big Sky and adjacent interest, but also downstream valley interests. All approved the motion. The motion carried as submitted.

General Public Comment on Water Pollution Control Issues

There were no additional comments from the public.

Agenda Items for Next Meeting

Agenda items recommended for the next meeting include an update on the decision by the Board on the ORW rulemaking and an update on repealing the temporary standards for the Upper Blackfoot Mining Complex.

Bob Bukantis said the Upper Blackfoot Mining Complex temporary standards repeal public meeting and hearing is on September 19th in Lincoln.

Terry McLaughlin adjourned the meeting at 12:35 p.m.